IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2206 OF 2005

IN

SUIT NO.2064 OF 2005

Aglowmed Ltd. ...Plaintiff.

vs.

Aglow Pharmaceuticals Pvt.Ltd. ...Defendant

Mr.V.R.Dhond i/b. M.A.Mahadgut, for Plaintiff

Mr.A.W.Ansari, for Defendant.

CORAM: D.K.DESHMUKH,J.

DATED: 22nd March, 2007.

P.C.:-

1. This is a notice of motion taken out by the plaintiff. The plaintiff has filed the suit for decree of permanent injunction restraining the defendant from using in relation to its business of manufacturing, marketing, selling, trading, exporting medicinal and pharmaceutical preparations and substances including bulk drugs, the trading name “AGLOW” or any other trading name/mark as a part of

its trading style or corporate name of the plaintiff as “AGLOWMED”. The corporate name of the plaintiff is "Aglowmed Ltd”. According to the plaintiff, in relation to the medicinal and pharmaceutical preparation the trade name has been registered. The defendant is also in the same business of manufacturing and selling of the pharmaceutical, and its corporate name is “Aglow Pharmaceuticals Pvt.Ltd.” The medicinal and pharmaceutical preparations that the defendant is manufacturing do not have trade mark “Aglow” and the trade mark under which this pharmaceutical preparation are selling are not the subject matter of this suit. The subject matter of the suit is used of word “Aglow” in the corporate name of the defendant-company.

2. The admitted position is that the defendant with the present corporate name i.e. Aglow Pharmaceuticals Pvt.Ltd. was registered under the Companies Act in the year 1992. The plaintiff states that the plaintiff was not aware of the registration of the defendant-company in the year 1992. But it is clear from the notice dated 29.8.1996 that the plaintiff became aware of the registration of the defendant with the corporate name M/s.Aglow Pharmaceuticals Pvt.Ltd. at least in August,1996. Thereafter, it appears that the plaintiff in the year 2001 made an application before the Registrar of Companies objecting to the adoption of the corporate name of the

defendant. That application was rejected in the year 2002. Thereafter, the petitioner filed proceedings before the Patna High Court in the year 2002 challenging the order passed under the Companies Act. That petition was rejected on 16.9.2004 and thereafter the present suit has been filed on 11.7.2005. Since from the year 1996 when the plaintiff became aware of the adoption of the corporate name by the defendant till today there is no interim order operating restraining the defendant from using the corporate name. In my opinion, therefore, it will not be appropriate for this Court to restrain the defendant from using corporate name which he is using from the year 1992 and with clear notice to the plaintiff in any case from the year 1996. Though, the corporate name is to be used by the manufacturer of the pharmaceutical preparations, the pharmaceutical preparations of the defendant are admittedly being sold under the different trade mark.

3. Taking any view of the matter therefore, in my opinion, by an interim order the defendant cannot be restrained from using the corporate name. The notice of motion is disposed of.